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DEVON CHRISTOPHER WENGER

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 DEVON CHRISTOPHER WENGER,
15 Defendant.

No. 34:23-cr-00268-JSW
**RESPONSE TO OSC re: SCHEDULING
(ECF 160)**

16
17 On March 10, 2025, this Court entered an Order to Show Cause as to undersigned counsel's
18 failure to meet established deadlines in the filing of motions *in limine* and other joint submissions. (Dkt.
19 No. 160).

20 As noted in the OSC, on December 9, 2024, counsel agreed to the trial date and the original
21 pretrial conference date of March 31, 2025. (Dkt. Nos. 133, 134). On January 15, 2025, this Court
22 subsequently modified this schedule by advancing the pretrial conference date by one week to March 24,
23 2025, which moved all filing deadlines tied to the pretrial conference. Counsel did not object to this
24 advancement of the filing dates because counsel believed that compliance was still possible.

25
26 Counsel has now completed jury trial in the matter of *USA v. Jeffrey* 24-CR-475 WHA which
27 occupied three days last week.

1 During the preparation for both of these trials, two events occurred which counsel could not have
 2 anticipated. First, on February 20, 2025, a close family member was involved in a motorcycle accident
 3 which resulted in multiple broken bones, then subsequent surgery. Second, counsel was required to
 4 prepare an emergency motion for compassionate release upon learning that a client facing a relatively
 5 short sentence experienced two serious neurological incidents in a two-month period as a direct result of
 6 the Bureau of Prison's refusal to provide him with the medication prescribed by his doctor, or to honor
 7 the treatment recommendations of the local hospital. Thankfully, he was released to recover at home.
 8 (See 20-CR-00204 WHO). Neither of these circumstances could be ignored, yet both affected the
 9 counsel's ability to complete all required tasks, and even to request additional time.¹

10 Counsel's untimely filing of the motion to exclude "bad acts" evidence was a direct response to
 11 the government's intent to admit such evidence and should not have been a surprise. Further, it is the
 12 proponent's burden to show the evidence is admissible under Fed.R.Evid 404(b), rather than the burden
 13 of the opponent to show it should be excluded.

14 Counsel does not have any additional proposed voir dire other than those areas (steroids and
 15 alternative messaging services) which counsel has requested be added to the questionnaire. (Dkt. 161)

16 Counsel's objections to the government's exhibit list will be filed contemporaneously with this
 17 response, but they primarily track the motions *in limine* which counsel has already filed. In the same
 18 document, counsel has proposed the addition of a handful of exhibits to the joint exhibit list, most of
 19 which are prior statements to be made available in the event they are needed for cross-examination.
 20 (Dkt. 162).

21 As previously noted, counsel's witness list will be drawn from the government's list and will be
 22 somewhat dependent upon this Court's *limine* rulings.

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25 ¹ Counsel has an unresolved brain aneurysm which is subject to ongoing monitoring. This requires
 26 counsel to closely monitor and control her blood pressure to avoid surgery.

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Counsel apologizes to this Court and to the government counsel for the inconvenience caused by these late filings. Whatever conclusions, the Court may draw from counsel's failure to meet deadlines, counsel respectfully requests that this Court not hold that failure against Mr. Wenger as he should not be prejudiced by counsel's limitations.

Dated: March 17, 2025

Respectfully Submitted,

/s/ Dena Marie Young
DENA MARIE YOUNG

Attorney for Defendant
DEVON CHRISTOPHER WENGER